GENERAL PROVISIONS

1. STATE OPERATIONS APPROPRIATIONS REDUCTIONS

	Legislature (Chg. to Base)	Veto (Chg. to Leg)	Net Change
GPR-Lapse	$15,895,800	$0	$15,895,800
PR-Lapse	20,051,000	- 20,051,000	0
FED-Lapse	8,099,800	- 8,099,800	0
SEG-Lapse	1,655,400	- 1,655,400	0
Total	$45,702,000	- $29,806,200	$15,895,800

Assembly: Provide that, within 30 days of the effective date of the budget, the Secretary of the Department of Administration shall determine for each executive branch agency, excluding the University of Wisconsin System, the number of positions in each agency that had been, as of July 1, 2001, vacant for a period of six months or more. Require that the Secretary then determine the annualized salary and fringe benefit costs associated with each of those identified vacant positions. Specify that the Secretary shall exclude from listing in this report any position that is vacant because the institution or facility for which it is authorized has not yet opened or begun operations as of July 1, 2001. Direct that the Secretary then notify each state agency of the result of these determinations. Provide that any affected agency may request a different allocation of the proposed lapses from state operations appropriations and a modification of the number of vacant positions to be deleted and, if the Secretary approves the request, the Secretary shall modify the determination. Based on his or her final determinations, require that the Secretary: (a) lapse to the general fund or to the respective program revenue account or segregated fund from which the positions are funded an amount equal to the salary and fringe benefit amounts identified for the vacant positions; (b) reduce or reestimate the corresponding appropriations to reflect the lapses; and (c) reduce the authorized positions for each agency by the number of vacant positions included in the final determinations. Direct that the Secretary report the results of all actions taken to the Joint Committee on Finance. It is estimated that there would be, as a result of this provision, annualized lapses of the following amounts: $11,836,600 GPR; $13,429,100 PR; $6,774,600 FED and $2,375,400 SEG.

Conference Committee/Legislature: Modify Assembly provision to provide that only positions vacant nine months or more on July 1, 2001, be used for the purposes of these appropriations and position reductions. It is estimated that there would be, as a result of this provision, annualized lapses of the following amounts: $7,947,900 GPR; $10,025,500 PR; $4,049,900 FED; and $827,700 SEG.

Veto by Governor [E-1]: Modify the provision in the following ways: (a) delete the requirement that the Secretary make the determinations within 30 days of the effective date of the budget bill; (b) delete the reference to agencies in the executive branch of government so that the provision would apply to all state agencies (except the University of Wisconsin),

including the Courts and Legislature; (c) delete the requirement that the Secretary make the determinations of vacant positions on an appropriation-by-appropriation basis; (d) modify the amount that each agency shall lapse to be such amount as identified by the Secretary's determination rather than the identified cost of an agency's vacant positions and provide that that determination is only of the total number and cost of those positions vacant nine months or more so that there is no specified linkage in the session law language as to how the amount of lapse for each agency is to be determined by the Secretary; (e) delete the requirement that each agency's authorized number of positions be reduced by the number of vacant positions identified; and (f) delete provisions relating to lapses of monies to other than the general fund. Although the remaining language could be read to require that the total cost of identified vacant positions is to be lapsed to the general fund, the Governor's veto message indicates the Governor's intent that the provision will be implemented by having the Secretary apply the vacant positions determination only to GPR-funded positions and "to give the secretary flexibility to apportion the required general purpose revenue equitably among all agencies". The veto message indicates an intent that only the general fund lapse of $7.9 million annually will be required by the Secretary.

[Act 16 Section: 9101(26n)]

[Act 16 Vetoed Section: 9101(26n)]

2. STATE AGENCY MEMBERSHIP DUES

	Legislature (Chg. to Base)	Veto (Chg. to Leg)	Net Change
GPR-Lapse	$1,000,000	$0	$1,000,000
PR-Lapse	1,002,200	- 1,002,200	0
SEG-Lapse	156,000	0	156,000
Total	$2,158,200	- $1,002,200	$1,156,000

Assembly/Legislature: Require the Secretary of DOA to lapse, in 2001-02 and in 2002-03, to the general fund or to the respective program revenue account or segregated fund of each state agency, excluding federal funds, an amount equal to 20% of the amounts expended in 2000-01 by the respective agency for the costs of membership dues in national and state organizations and reduce or reestimate the corresponding appropriations to reflect the lapses. Provide that these amounts shall be lapsed from the respective agency appropriations from which the membership dues were paid in 2000-01. It is estimated that this provision would result in the lapses totaling $1,079,100 annually (consisting of annual lapses of $500,000 GPR, $501,100 PR and $78,000 SEG).

Veto by Governor [E-2]: Delete the references to a required lapse for each state agency and for each individual appropriation from which the membership dues were paid in 2001-02. Also delete the requirement that the lapse or appropriation reduction be equal to 20% of the total expenditure made for membership dues in 2000-01. Finally, delete the requirement that there be any lapse for membership dues that are paid from program revenue appropriations or

from any segregated fund appropriation where the revenue received is separately accounted for within the specific segregated appropriation. The result of this partial veto is to allow the Secretary of DOA to determine which agencies and which appropriations within those agencies will have lapses of monies originally appropriated for membership dues and to determine the amount of the money to be lapsed from each agency [the Governor's veto message states that the total fiscal effect will be unchanged; however, as a result of the partial veto, no lapses from program revenue appropriations will be required].

[Act 16 Section: 9101(22k)]

[Act 16 Vetoed Section: 9101(22k)]

3. TRANSFER OF AGENCY PR AND SEG APPROPRIATION AMOUNTS TO GENERAL FUND

GPR-REV	$37,600,000

Conference Committee/Legislature: Provide that, in fiscal year 2001-02 and in fiscal year 2002-03, the Secretary of Administration shall transfer to the general fund, from those respective executive branch state operations appropriations, funded from program revenues or segregated funds, as determined by the Secretary, an amount equal to $18,800,000 annually. Require that the Secretary exclude, for the purposes of this transfer requirement, any program revenue or segregated fund appropriation which is funded from federal revenues. In addition, provide that the Secretary may not require a transfer under this provision from any of the following: (a) any appropriation to the University of Wisconsin System, the Department of Employee Trust Funds and the State of Wisconsin Investment Board; (b) any appropriation which is for debt retirement or lease rental payments, construction projects of the Department of Transportation, operation of state institutions for the care or custody of individuals, or state patrol operations; (c) any appropriation funded from gift, grant or endowment funds; and (d) any appropriation subject to limitations as to expenditure or use as a result of federal law or the state constitution that would prohibit a lapse under this provision. Provide that the Secretary shall submit the proposed transfers in each year to the Joint Committee on Finance for approval under a 14-day passive review process.

[Act 16 Section: 9101(23r)]

4. REGISTER OF DEEDS FEES FOR CERTIFYING COPIES

Governor/Legislature: Increase the fee that registers of deeds charge for certifying copies of records or papers from $0.25 to $1, effective with copies certified on the effective date of the bill. Each county has a register of deeds responsible for maintaining records pertaining to real estate, personal property, births, deaths, marriages, other vital statistics, historical societies in the county, posts of the Grand Army of the Republic in the county and the organization of corporations, fraternal societies, religious groups, associations and other entities. When

providing copies of records, current law authorizes registers of deeds to charge $2 for the first page and $1 for each additional page, plus the certification fee.

[Act 16 Sections: 2000 and 9359(9)]

5. BIFURCATED SENTENCING STRUCTURE MODIFICATIONS

Governor: Modify the current bifurcated sentencing (truth-in-sentencing) structure as follows:

a. *Revocation of Extended Supervision*. Specify that every person released to extended supervision remains in the legal custody of Corrections. If the Department alleges that any condition or rule of extended supervision has been violated, the Department may take physical custody of the person for the investigation of the alleged violation.

In regards to revocation hearings, create a definition of "reviewing authority" (the Division of Hearings and Appeals in the Department of Administration, upon proper notice and hearing, or the Department of Corrections, if the parolee waives a hearing). Specify that the reviewing authority may consolidate parole and extended supervision revocation hearings for the same person. If an extended supervision revocation hearing is held before the Division of Hearing and Appeals, allow the hearing examiner to order the taking and allow the use of a videotaped deposition under certain circumstances.

Specify that if there is a hearing before the Division of Hearings and Appeals, the person on extended supervision may seek review of a decision to revoke extended supervision and the Department of Corrections may seek review of a decision to not revoke extended supervision. Review of a decision may be sought only by an action for certiorari.

Specify that if a person on extended supervision (other than an individual serving a life sentence) is returned to prison, the maximum amount of additional confinement time is the person's total sentence less confinement time already served, including any extensions imposed for infractions, and all time served in confinement for previous revocations of extended supervision under the sentence. If a person is returned to prison for a period of time that is less than the time remaining on a bifurcated sentence, specify that the person be released to extended supervision after he or she has served the period of time specified by the reviewing authority and any extensions imposed the Department. Specify that the remaining extended supervision portion of the bifurcated sentence is the total length of the bifurcated sentence, less the time served in confinement under the bifurcated sentence, including time served in confinement for any revocation.

Require the Division of Hearings and Appeals to assign and supervise hearing examiners for extended supervision hearings.

b. *Penalties for Criminal Attempt*. If a court imposes a bifurcated sentence for an attempt to commit a felony offense or a misdemeanor battery, battery to an unborn child or

theft offense, the following requirements would apply: (1) if the completed crime is a classified felony, the maximum term of confinement in prison for an attempt is one-half of the maximum term of confinement in prison for the classified felony; or (2) if the completed crime is not a classified felony, the maximum term of confinement for the attempt is 75% of the maximum term of imprisonment for the crime. Subject to the required minimum extended supervision term, the maximum term of confinement in prison for an attempt may be increased for habitual criminality or a second or subsequent drug offense. Specify that if the maximum term of confinement in prison is increased for habitual criminality or a second or subsequent drug offense, the maximum term of imprisonment is increased by the same amount. These provisions would become effective and applicable to crimes committed on the first day of the seventh month after publication of the bill.

c. *Not Guilty by Reason of Mental Disease or Defect*. Specify that when a defendant is found not guilty by reason of mental disease or mental defect for a crime committed on or after the first day of the seventh month after publication of the bill and the crime is one for which a court may impose a bifurcated sentence, the court is required to commit the person to the Department of Health and Family Services for a specified period not exceeding the maximum term of confinement in prison that could be imposed on an offender convicted of the same crime, including imprisonment authorized by any applicable penalty enhancement statutes. The provision would become effective and applicable to crimes committed on the first day of the seventh month after publication of the bill.

Specify that when a defendant is found not guilty by reason of mental disease or mental defect for a misdemeanor committed before the first day of the seventh month after publication of the bill, or a misdemeanor committed on or after the first day of the seventh month after publication of the bill for which a court may not impose a bifurcated sentence, the court is required to commit the person to the Department of Health and Family Services for a specified period not exceeding two-thirds of the maximum term of imprisonment that could be imposed against an offender convicted of the same misdemeanor, including imprisonment authorized by any applicable penalty enhancement statutes.

d. *Misdemeanants Sentenced to Prison as a Result of Penalty Enhancers or Placed on Probation*. Specify that for misdemeanors committed on or after the first day of the seventh month after publication of the bill, if a court sentences an individual to prison (rather than to county jail) as a result of the application of penalty enhancers, the person sentenced receives a bifurcated sentence.

Create the following definitions: (a) "bifurcated sentence misdemeanor," a misdemeanor committed on or after the first day of the seventh month after publication of the bill, for which a court may impose a bifurcated sentence; and (b) "indeterminate sentence misdemeanor," a misdemeanor other than a bifurcated sentence misdemeanor. Specify that individuals placed on probation as a result of a "bifurcated sentence misdemeanor" are required to be serve terms of probation as are individuals placed on probation for felony offenses.

Under current law, a person placed on probation for a felony is required to serve a term of not less than one year nor more than the maximum term of imprisonment for the crime or three years, whichever is greater. If a probationer is convicted of two or more crimes including at least one felony, at the same time, the maximum term of probation may increase by one year for each felony conviction. Include bifurcated sentence misdemeanors under the provision for increasing probation terms. These provisions would become effective and applicable on the first day of the seventh month after publication of the bill.

e. *Consecutive and Concurrent Sentences.* Create the following definitions: (a) "determinate sentence," a bifurcated sentence or a life sentence under which a person is eligible for release to extended supervision; (b) "indeterminate sentence," a sentence to the Wisconsin state prisons other than a determinate sentence or a sentence under which the person is not eligible for release on parole; and (c) "period of confinement in prison," with respect to any sentence to the Wisconsin state prisons, any time during which a person is incarcerated under that sentence, including any extensions and any period of confinement in prison required to be served as a result of revocation.

1. Determinate Sentence to Run Concurrently with or Consecutive to Determinate Sentences. Specify that if a court provides that a determinate sentence is to run concurrently with another determinate sentence, the person sentenced is required to serve the periods of confinement in prison under the sentences concurrently and the terms of extended supervision under the sentences concurrently. If a court provides that a determinate sentence is to run consecutive to another determinate sentence, the person sentenced is required to serve the periods of confinement in prison under the sentences consecutively and the terms of extended supervision under the sentences consecutively and in the order in which the sentences have been pronounced.

2. Determinate Sentence to Run Concurrently with or Consecutive to Indeterminate Sentences. Specify that if a court provides that a determinate sentence is to run concurrently with an indeterminate sentence, the person sentenced is required to serve the period of confinement in prison under the determinate sentence concurrently with the period of confinement in prison under the indeterminate sentence and the term of extended supervision under the determinate sentence concurrently with the parole portion of the indeterminate sentence. If a court provides that a determinate sentence is to run consecutive to an indeterminate sentence, the person sentenced is required to serve the period of confinement in prison under the determinate sentence consecutive to the period of confinement in prison under the indeterminate sentence and the parole portion of the indeterminate sentence consecutive to the term of extended supervision under the determinate sentence.

3. Indeterminate Sentence to Run Concurrently with or Consecutive to Determinate Sentences. Specify that if a court provides that an indeterminate sentence is to run concurrently with a determinate sentence, the person sentenced is required to serve the period of confinement in prison under the indeterminate sentence concurrently with the period of confinement in prison under the determinate sentence and the parole portion of the

indeterminate sentence concurrently with the term of extended supervision required under the determinate sentence. If a court provides that an indeterminate sentence is to run consecutive to a determinate sentence, the person sentenced is required to serve the period of confinement in prison under the indeterminate sentence consecutive to the period of confinement in prison under the determinate sentence and the parole portion of the indeterminate sentence consecutive to the term of extended supervision under the determinate sentence.

4. Indeterminate or Determinate Consecutive Sentences. Specify that all consecutive sentences for crimes committed before December 31, 1999, be computed as one continuous sentence. Specify that all consecutive sentences imposed for crimes committed on or after December 31, 1999, be computed as one continuous sentence.

5. Revocation in Multiple Sentence Cases. Specify that if a person is serving concurrent determinate sentences and extended supervision is revoked in each case, or if a person is serving a determinate sentence concurrent with an indeterminate sentence and both extended supervision and parole are revoked, the person shall concurrently serve any periods of confinement in prison required under those sentences.

f. *No Parole.* Clarify that a person serving a bifurcated sentence is not eligible for release on parole under that sentence. (A person may be paroled under an indeterminate sentence running concurrently or consecutively with the bifurcated sentence.)

Senate/Legislature: Delete provision.

6. TIME LIMITS FOR PROSECUTING CERTAIN SEXUAL ASSAULT CRIMES AND DEOXYRIBONUCLEIC ACID (DNA) EVIDENCE

Governor: Define "deoxyribonucleic acid (DNA) profile" as any analysis of DNA that results in the identification of an individual's patterned chemical structure of genetic information. Specify that for first- or second-degree sexual assault, the state may commence prosecution of a person within 12 months after comparison of DNA evidence relating to the crime results in a probable identification of a person, if: (a) the state has evidence of a DNA profile of a person who committed the crime; (b) the evidence was collected before the statute of limitation expired (prosecution commenced within six years); and (c) comparisons of the evidence to DNA profiles of known persons made before the time limitation expired did not result in a probable identification of the person. Specify that for first- or second-degree sexual assault of a child or engaging in repeated acts of sexual assault of the same child, the state may commence prosecution of a person within 12 months after comparison of DNA evidence relating to the crime results in a probable identification of the person, if: (a) the state has evidence of a DNA profile of a person who committed the crime; (b) the evidence was collected before the statute of limitation expired (prosecution commenced before the victim reaches the age of 31); and (c) comparisons of the evidence to DNA profiles of known persons made before the time limits expired did not result in a probable identification of the person. These

provisions would first apply to offenses not barred from prosecution on the effective date of the bill.

Senate: Delete provision. Instead, provide the following concerning time limits for prosecuting certain sexual assault crimes and DNA evidence:

Statutory Definition of "Deoxyribonucleic Acid (DNA) Profile". Define "deoxyribonucleic acid (DNA) profile" to mean an individual's patterned chemical structure of genetic information identified by analyzing biological material that contains the individual's deoxyribonucleic acid. Current law limits the definition of DNA profile to the identification of an individual's patterned chemical structure of genetic information using only the restriction fragment length polymorphism form of analysis.

Time Limits for Prosecuting Certain Sexual Assault Crimes. Create an exception to the time limits for prosecuting the crimes of first- and second-degree sexual assault, sexual assault of a child, and repeated sexual assault of the same child in certain circumstances if the state has DNA evidence related to the crime. Provide that the state may prosecute an individual for first- or second-degree sexual assault, if within six years of the commission of the crime: (a) the state collected biological material that is evidence of the identity of the individual who committed the sexual assault; (b) the state identified a DNA profile from the biological material; and (c) comparisons of that DNA profile to DNA profiles of known persons did not result in a probable identification of the individual who is the source of the biological material. Further provide that the state may prosecute an individual for sexual assault of a child or engaging in repeated sexual assault of the same child if, before the victim reaches 31 years of age: (a) the state collected biological material that is evidence of the identity of the individual who committed the sexual assault; (b) the state identified a DNA profile from the biological material; and (c) comparisons of that DNA profile to DNA profiles of known persons did not result in a probable identification of the individual who is the source of the biological material. Provide that the state may prosecute an individual under these circumstances who is the source of the biological material within 12 months after comparison of the DNA profile relating to the sexual assault results in a probable identification of the individual, if there is probable cause to believe that the biological material was left by the individual at the time of the sexual assault. These provisions would first apply to offenses not barred from prosecution on the effective date of the bill.

Postconviction and Post Commitment Deoxyribonucleic Acid (DNA) Testing of Evidence. Provide that at any time after being convicted of a crime, adjudicated delinquent, or found not guilty by reason of mental disease or defect, a person could make a motion in the court in which he or she was convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect for an order requiring forensic DNA testing of evidence to which all of the following would apply: (a) the evidence was relevant to the investigation or prosecution that resulted in the conviction, adjudication, or finding of not guilty by reason of mental disease or defect; (b) the evidence is in the actual or constructive possession of a government agency (meaning any department, agency, or court of the federal government, of this state, or of a city, village, town, or county in this state); and (c) the evidence has not previously been subjected to

forensic DNA testing or, if the evidence was previously tested, it could now be subjected to another test using a scientific technique that was not available or was not utilized at the time of the previous testing and that provides a reasonable likelihood of more accurate and probative results.

Require a party bringing such a motion or his or her attorney to serve a copy of the motion on the district attorney's office that prosecuted the case that resulted in the conviction, adjudication, or finding of not guilty by reason of mental disease or defect. The court in which the motion is made would be required to notify the appropriate district attorney's office that a motion had been made and would be required to give the district attorney an opportunity to respond to the motion. Failure by a party bringing the motion to serve a copy on the appropriate district attorney's office would not deprive the court of jurisdiction and would not be grounds for dismissal of the motion.

Require the clerk of the circuit court in which such a motion would be made to send a copy of the motion and, if a hearing on the motion was scheduled, a notice of the hearing to the victim of the crime or delinquent act committed by the party bringing the motion, if the clerk was able to determine an address for the victim. The clerk of the circuit court would be required to make a reasonable attempt to send the copy of the motion to the address of the victim within seven days of the date on which the motion was filed and would be required to make a reasonable attempt to send a notice of hearing, if a hearing was scheduled, to the address of the victim, postmarked at least ten days before the date of the hearing. Require the Department of Corrections, the Parole Commission, and the Department of Health and Family Services to assist clerks of court in obtaining information regarding the mailing address of victims for the purpose of sending copies of motions and notices of hearings.

Upon receiving a copy of a motion or notice from a court that a motion had been made, whichever occurred first, require the district attorney to take all actions necessary to ensure that all DNA evidence that was collected in connection with the investigation or prosecution of the case and that remained in the custody of a government agency was preserved pending completion of the proceedings.

Upon demand, require the district attorney to disclose to the party bringing the motion or his or her attorney whether DNA evidence had been tested and to make available to the party bringing the motion or his or her attorney the following materials: (a) findings based on testing of DNA evidence; and (b) physical evidence that was in the actual or constructive possession of a government agency and that contained biological material or on which there was biological material.

Upon demand, require the party bringing the motion or his or her attorney to disclose to the district attorney whether biological material had been tested and would be required to make available to the district attorney the following materials: (a) findings based on testing of biological materials; and (b) the party's biological specimen.

Upon motion of the district attorney or the party bringing the motion, permit the court to impose reasonable conditions on availability of material requested under the above two paragraphs in order to protect the integrity of the evidence. The above disclosure obligations would not apply unless the information being disclosed or the material being made available was relevant to the party's claim of innocence at issue in the motion.

Require a court in which a motion is made for postconviction DNA testing of certain evidence to order forensic DNA testing if all of the following would apply: (a) it is reasonably probable that the party bringing the motion would not have been prosecuted, convicted, found not guilty by reason of mental disease or defect, or adjudicated delinquent for the offense at issue in the motion, if exculpatory DNA testing results had been available before the prosecution, conviction, finding of not guilty, or adjudication for the offense; (b) the evidence is in the actual or constructive possession of a government agency; (c) the chain of custody of the evidence to be tested establishes that the evidence had not been tampered with, replaced, or altered in any material respect or, if the chain of custody did not establish the integrity of the evidence, the testing itself could establish the integrity of the evidence; and (d) the evidence had not previously been subjected to forensic DNA testing or, if the evidence had previously been tested, it could now be subjected to another test using a scientific technique that was not available or was not utilized at the time of the previous testing and that could provide a reasonable likelihood of more accurate and probative results.

Permit a court to order forensic DNA testing if all of the following would apply or if the court would determine that testing is in the interest of justice: (a) the conviction or sentence in a criminal proceeding, the finding of not guilty by reason of mental disease or defect, commitment for persons found not guilty by reason of mental disease or defect, or the adjudication or disposition in a juvenile justice proceeding, would have been more favorable to the party bringing the motion if the results of DNA testing had been available before he or she was prosecuted, convicted, found not guilty by reason of mental disease or defect, or adjudicated delinquent for the offense; (b) the evidence is in the actual or constructive possession of a government agency; (c) the chain of custody of the evidence to be tested establishes that the evidence had not been tampered with, replaced, or altered in any material respect or, if the chain of custody did not establish the integrity of the evidence, the testing itself could establish the integrity of the evidence; and (d) the evidence had not previously been subjected to forensic DNA testing or, if the evidence had previously been tested, it could now be subjected to another test using a scientific technique that was not available or was not utilized at the time of the previous testing and that could provide a reasonable likelihood of more accurate and probative results.

Permit a court to impose reasonable conditions on any testing ordered in order to protect the integrity of the evidence and the testing process. If appropriate and if stipulated to by the party bringing the motion and the district attorney, permit the court to order the state crime laboratories to perform the testing. If the laboratories would receive biological material under a court order, the laboratories would be required to analyze the DNA in the material and submit

the results to the court that ordered the analysis. The laboratories would be permitted to compare the data obtained from the court with data obtained from other specimens. The laboratories would be permitted to make data obtained from any analysis and comparison available to law enforcement agencies in connection with criminal or delinquency investigations and, upon request, to any prosecutor, defense attorney, or subject of the data. Allow the data to be used in criminal and delinquency actions and proceedings. The laboratories would normally be precluded from including data obtained under a court order for testing under this section in the state's DNA data bank. Exceptions would apply for DNA specimens received under the involuntary commitment for treatment, juveniles adjudged delinquent, mental disease or defect and the DNA analysis requirements statutory sections.

If a court would not order forensic DNA testing, or if the results of forensic DNA testing ordered were not supportive of the party's innocence claim, require the court to determine the disposition of the evidence specified in the motion subject to the following: (a) if a person other than the party bringing the motion is in custody, the evidence is relevant to the criminal, delinquency, or commitment proceeding that resulted in the person being in custody, the person has not been denied DNA testing or postconviction relief, and the person had not waived his or her right to preserve the evidence, the court would be required to order the evidence preserved until all persons entitled to have the evidence preserved are released from custody, and the court would be required to designate who shall preserve the evidence; and (b) if the conditions in (a) were not present, the court would be required determine the disposition of the evidence, and, if the evidence was to be preserved, by whom and for how long. Require the court to issue appropriate orders concerning the disposition of the evidence based on its determinations.

If the results of forensic DNA testing ordered supported the party's claim of innocence, require the court to schedule a hearing to determine the appropriate relief to be granted to the party. After the hearing, and based on the results of the testing and any evidence or other matter presented at the hearing, require the court to enter any order that serves the interests of justice, including any of the following: (a) an order setting aside or vacating the party's judgment of conviction, judgment of not guilty by reason of mental disease or defect, or adjudication of delinquency; (b) an order granting the party a new trial or fact–finding hearing; (c) an order granting the party a new sentencing hearing, commitment hearing, or dispositional hearing; (d) an order discharging the party from custody; and (e) an order specifying the disposition of any evidence that remained after the completion of the testing. Provide that a court could order a new trial under this section even if the evidence had come to the party's notice before the original trial was over and regardless of whether the party's failure to discover the evidence was due to a lack of diligence.

Require a court considering a motion made by a party who is not represented by counsel, if the party claims or appears to be indigent, to refer the party to the state public defender for determination of indigency and appointment of counsel if qualified. Allow a court to order a

party to pay the costs of any testing ordered by the court if the court determined that the party was not indigent.

If the court determined that the party was indigent, require the court to order the costs of the testing to be paid from a newly-created Department of Corrections' postconviction evidence testing costs appropriation. A party would be considered indigent if any of the following applied: (a) the party was referred to the state public defender for a determination of indigency and was found to be indigent; (b) the party was referred to the state public defender for a determination of indigency and was found not to be indigent, but the court determined that the party did not possess the financial resources to pay the costs of testing; or (c) the party was not referred to the state public defender for a determination of indigency but the court determined that the party did not possess the financial resources to pay the costs of testing.

An appeal could be taken from an order entered under this section as from a final judgment.

Reversal, Vacation or Setting Aside of Judgment Relating to a Sexually Violent Offense. Define "judgment relating to a sexually violent offense" as a judgment of conviction for a sexually violent offense, an adjudication of delinquency on the basis of a sexually violent offense, or a judgment of not guilty of a sexually violent offense by reason of mental disease or defect.

Provide that if, at any time after a person is committed as a sexually violent person, a judgment relating to a sexually violent offense committed by the person is reversed, set aside, or vacated and that sexually violent offense was a basis for the allegation made in the petition to be committed as a sexually violent person, the person could bring a motion for postcommitment relief in the court that committed the person. Require the court to proceed as follows on the motion for postcommitment relief: (a) if the sexually violent offense was the sole basis for the allegation that the person was a sexually violent person and there were no other judgments relating to a sexually violent offense committed by the person, the court would be required to reverse, set aside, or vacate the judgment that the person is a sexually violent person, vacate the commitment order, and discharge the person from the custody or supervision of the Department of Health and Family Services; and (b) if the sexually violent offense was the sole basis for the allegation made in the petition to be committed as a sexually violent person but there were other judgments relating to a sexually violent offenses committed by the person that have not been reversed, set aside, or vacated, or if the sexually violent offense was not the sole basis for the allegation that the person was a sexually violent person, the court would be required to determine whether to grant the person a new trial under the sexually violent person commitments chapter because the reversal, setting aside, or vacating of the judgment for the sexually violent offense would probably change the result of the trial.

An appeal could be taken from an order entered under this section as from a final judgment.

New Hearing Under the Juvenile Justice Code. Permit a juvenile adjudged delinquent or the juvenile's parent, guardian, or legal custodian, at any time after the entering of the court's order to petition the court for a rehearing on the ground that new evidence had been discovered affecting the advisability of the court's original jurisdiction. Upon a showing that such evidence did exist, require the court to order a new hearing. This section would not apply to a motion for postconviction DNA testing.

Preservation of DNA Evidence by Courts, Law Enforcement Agencies, District Attorneys and the State Crime Laboratories. Direct courts, law enforcement agencies, district attorneys, and the state crime laboratories to preserve biological specimen evidence if a person in custody could potentially be exonerated as a result of DNA testing of the evidence and if the person in custody has not waived his or her right to preserve the evidence. Define "custody" to mean actual custody of a person under a sentence of imprisonment, custody of a probationer, parolee, or person on extended supervision by the Department of Corrections, actual or constructive custody of a person pursuant to a dispositional order under the juvenile justice code, supervision of a person, whether in institutional care or on conditional release, pursuant to a commitment order for persons found not guilty by reason of mental disease or mental defect and supervision of a sexually violent person, whether in detention before trial or while in institutional care or on supervised release pursuant to a commitment order.

If physical evidence in the possession of a crime laboratory, law enforcement agency or district attorney includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, delinquency adjudication or commitment by reason of mental disease or defect or as a sexually violent person, require the crime laboratory or law enforcement agency to preserve the physical evidence until every person in custody as a result of the conviction, adjudication or commitment has reached his or her discharge date. Define "discharge date" to mean the date on which a person is released or discharged from custody that resulted from a criminal action, a delinquency proceeding, a commitment by reason of mental disease or defect or as a sexually violent person or, if the person is serving consecutive sentences of imprisonment, the date on which the person is released or discharged from custody under all of the sentences.

Provide that DOJ, a law enforcement agency or a district attorney may destroy biological material before the expiration of the time period outlined above if all of the following apply: (a) DOJ, a law enforcement agency or a district attorney sends a notice of its intent to destroy the biological material to all persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment by reason of mental disease or defect or as a sexually violent person, and to either the attorney of record for each person in custody or the state public defender; (b) no person who is notified filed a motion for postconviction testing of the biological material or submitted a written request to preserve the biological material to DOJ, the law enforcement agency or district attorney within 90 days after the date on which the person received the notice; and (c) no other provision of federal or state law requires DOJ, the law enforcement agency or the district attorney to preserve the biological material. Require the

notice to clearly inform the recipient that the biological material will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for postconviction testing of the material is filed or a written request to preserve the material is submitted. If, after providing notice of its intent to destroy biological material, DOJ, a law enforcement agency or a district attorney receives a written request to preserve the material, DOJ, the law enforcement agency or the district attorney must preserve the material until the discharge date of the person who made the request or on whose behalf the request was made, unless a court authorizes the destruction of the biological material.

If an exhibit in a criminal action or a delinquency proceeding included any biological material that was collected in connection with the action or proceeding, require the trial court to ensure that the exhibit was preserved until every person in custody as a result of the action or proceeding, or as a result of a commitment as a sexually violent person based on a judgment of guilty or not guilty by reason of mental disease or defect in the action or proceeding, had reached his or her discharge date. Trial courts would be subject to the same procedures regarding the destruction of biological material that applies to DOJ, law enforcement agencies and district attorneys.

Provide that the rights of victims and witnesses and of other parties to have property returned would be subject to the obligation of law enforcement to preserve biological material as spelled out above.

DNA Evidence Discovery Rules. Eliminate the list of specific forms of test results that a party who intends to introduce DNA evidence must provide to the opposing party, and instead rely on general discovery rules for production of scientific test results. Provide that if any party intends to submit DNA profile evidence at a trial to prove or disprove the identity of a person, the party seeking to introduce the evidence must notify the other party of the intent to introduce the evidence in writing by mail at least 45 days before the date set for trial; and must provide the other party, within 15 days of request, the material that relates to the evidence. Require a court to exclude DNA profile evidence at trial, if the notice and production deadlines are not met, except the court may waive the 45-day notice requirement or may extend the 15-day production requirement upon stipulation of the parties, or for good cause, if the court finds that no party will be prejudiced by the waiver or extension. Allow the court in appropriate cases to grant the opposing party a recess or continuance.

Current law provides separate discovery rules for use of DNA evidence in a criminal or delinquency proceeding. The rules include a definition for DNA evidence that applies only to evidence obtained by using the restriction fragment length polymorphism (RFLP) technique of DNA analysis. More recently adopted DNA testing techniques such as polymerase chain reaction and mitochondrial DNA testing are not covered by the current rules.

The discovery rules for DNA evidence specify what test results a party that intends to use DNA evidence must provide to the opposing party. The specified results are only created when the RFLP testing technique is used. The DNA evidence discovery rules also set specific time frames for providing notice of intent to use DNA evidence at trial and for producing test results.

Conference Committee/Legislature: Make the following modifications to the Senate provisions: (a) delete the requirement of a showing of probable cause to believe that the biological material was left by the individual at the time that the violation was committed as a prerequisite to extending the time limits for prosecution of first- or second-degree sexual assault, sexual assault of a child or engaging in repeated sexual assault of the same child; (b) delete the provision permitting courts that review postconviction DNA testing motions discretion to order testing of DNA evidence "in the interest of justice"; (c) provide that if discovery of new evidence other than DNA evidence presents a constitutional or statutory issue and meets other statutory criteria, allow a court to order a new trial after one year has passed from the date of the trial; (d) require a court to order DNA testing if, in addition to making the other required showings, the person bringing a motion for testing claims that he or she is innocent of the offense at issue in the motion and the evidence to be tested is relevant to the investigation or prosecution that resulted in the conviction, adjudication, or finding of not guilty by reason of mental disease or defect; (e) permit a court to order DNA testing if, in addition to making the other required showings, it is reasonably probable that the outcome of the proceedings that resulted in the conviction, finding of not guilty by reason of mental disease or defect, or the delinquency adjudication, the terms of the sentence, not guilty by reason of mental disease or defect commitment, or the disposition under the juvenile justice code would have been more favorable to the individual bringing the motion if the results of the DNA testing had been available and the evidence to be tested is relevant to the investigation or prosecution that resulted in the conviction, adjudication, or finding of not guilty by reason of mental disease or defect; (f) permit DOJ, upon being informed by the submitting officer or agency that physical evidence in the possession of the state crime laboratories is no longer needed, to return the physical evidence to the submitting officer or agency subject to the return of property seized provisions of the statutes; (g) unless otherwise provided in a court order issued under the postconviction DNA testing statute, permit the state crime laboratories to return biological material to the agency that submitted the evidence; and (h) provide that a court may not issue an order under the postconviction DNA testing statute requiring that an agency transfer evidence to a state crime laboratory for the purpose of preservation of the evidence by the state crime laboratory, unless the state crime laboratory consents to the transfer.

Veto by Governor [D-17]: Delete: (a) the requirement that the cost of forensic DNA testing of indigent movants be paid from the Department of Corrections' postconviction evidence testing costs appropriation created in Enrolled Senate Bill 55; (b) the Department of Corrections' postconviction evidence testing costs appropriation; and (c) the prohibition on courts from issuing an order requiring that an agency transfer evidence to a state crime laboratory for the purpose of preservation of the evidence by the state crime laboratory, unless the state crime laboratory consents to the transfer. The Governor's veto message indicates that it is his intent to grant the courts authority to order the Department of Justice to cover the costs of indigent testing, with program revenue funding provided from the crime laboratories and drug law enforcement assessment and the DNA surcharge imposed on certain violations.

[Act 16 Sections: 2858c thru 2858k, 3780c, 3780d, 3828c, 3828k, 3828L, 3829d thru 3829p, 3889p, 3889r, 3908g, 3934 thru 3936c, 3984j, 3984p, 3998c thru 3998n, 4002r thru 4002v, 4003r, 4003t, 4028c thru 4028j, 4031c, 4031e, 4031s, 4034ys and 9359(5)&(12c)]

[Act 16 Vetoed Sections: 395 (as it relates to s. 20.410(1)(be)), 676r and 4028j]

7. CLUB DRUG PENALTIES

Governor/Legislature: Include 4-methylthioamphetamine, commonly known as 4-MTA or flatliner, to the list of Schedule I controlled substance stimulants. Specify that the manufacture, distribution or delivery or the possession with intent to manufacture, distribute or deliver Gamma-hydroxybutyric acid (GBH), gamma-butyrolactone (GBL), 3,4-methylenedioxymetham-phetamine (ecstasy), 4-bromo-2,5-dimethoxy-beta-phenylethylamine (nexus), 4-methylthioam-phetamine, ketamine, or any of these substances' controlled substance analogs, and flunitrazepam is subject to the following penalties based on quantity:

a. Three grams or less, the person shall be fined not less than $1,000 nor more than $200,000 and may be imprisoned for not more than seven years and six months.

b. More than three grams but not more than 10 grams, the person shall be fined not less than $1,000 nor more than $250,000 and shall be imprisoned for not less than six months nor more than seven years and six months.

c. More than 10 grams but not more than 50 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than one year nor more than 22 years and six months.

d. More than 50 grams but not more than 200 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than three years nor more than 22 years and six months.

e. More than 200 grams but not more than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than five years nor more than 22 years and six months.

f. More than 400 grams, the person shall be fined not less than $1,000 nor more than $500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.

Specify that the manufacture, distribution, delivery, possession with intent to manufacture, distribute, or deliver, or the manufacture, distribution, delivery or possession with intent to manufacture, distribute or deliver counterfeits to any of the above substances is punishable by the applicable fine and imprisonment for the manufacture, distribution, delivery, or possession with intent to manufacture, distribute or deliver the genuine controlled substance.

Under current law, the penalty for the manufacture, distribution, delivery, possession with intent to manufacture, distribute or deliver the above substances or counterfeits of the substances, with the exception of 4-MTA, is a fine of not more than $15,000 or imprisonment for not more than seven years and six months or both.

Specify that the manufacture, distribution, delivery, possession with intent to manufacture, distribute or deliver, or the manufacture, distribution, delivery or possession with intent to manufacture, distribute or deliver counterfeits of phencyclidine (PCP), methamphetamine and lysergic acid diethylamide (LSD) is punishable by the applicable fine and imprisonment for the manufacture, distribution, delivery, or possession with intent to manufacture, distribute or deliver the genuine controlled substance.

Under current law, the penalty for the manufacture, distribution, delivery, possession with intent to manufacture, distribute or deliver counterfeit PCP, methamphetamine or LSD is a fine of not more than $15,000 or imprisonment for not more than seven years and six months or both. The penalties for the manufacture, distribution, delivery, or possession with intent to manufacture, distribute or deliver the genuine controlled substance vary by specific substance but range from a fine of not less than $1,000 nor more than $100,000 and imprisonment for not more than seven years and six months for three grams or less of PCP and one gram or less of LSD, to a fine of not less than $1,000 nor more than $1,000,000 and imprisonment for not less than 10 years nor more than 45 years for more than 400 grams of methamphetamine.

[Act 16 Sections: 3985 thru 3996]

8. CRIMES RELATED TO COMPUTERS, OBSCENITY, NUDITY AND PORNOGRAPHY

Governor: Modify current law related to computer crimes, obscenity, nudity and pornography as follows:

a. *Computer Crimes.* Create a new crime of intentionally causing an interruption in computer service by submitting a message, or multiple messages, to a computer, computer program, computer system, or computer network that exceeds the processing capacity of the computer, computer program, computer system, or computer network. Add the following definitions to the statutory computer crimes provisions: (a) "access" means to instruct, communicate with, interact with, intercept, store data in, retrieve data from, or otherwise use the resources of; and (b) "interruption in services" means inability to access a computer, computer program, computer system, or computer network, or an inability to complete a transaction involving a computer. Provide that the new crime would be a Class A misdemeanor (punishable by a fine of not more than $10,000 or nine months in jail, or both) unless: (a) the offense is committed to defraud or obtain property or the offense results in damage valued at more that $1,000 but not more than $2,500 (Class E felony, punishable by a fine of not more than $10,000 or not more than two years in prison and three years on extended supervision, or both); or (b) the offense results in damage valued at more than $2,500 or creates a substantial and unreasonable risk of death or great bodily harm to another (Class C felony,

punishable by a fine of not more than $10,000 or 10 years in prison and five years on extended supervision, or both).

Modify the penalties for existing offenses against computer data and programs as follows: (a) make any offense that results in damage valued between $1,000 and $2,500 a Class E felony; and (b) make any offense resulting in damage valued at more than $2,500, and any offense that causes an interruption or impairment of governmental operations or public communication, of transportation, or of a supply of water, gas, or other public service a Class C felony. Under current law, it is a Class E felony if the offense is committed to defraud or to obtain property; a Class D felony (punishable by a fine of not more than $10,000 or five years in prison and five years on extended supervision, or both) if the damage caused is greater than $2,500 or if it causes an interruption or impairment of governmental operations or public communication, of transportation or of a supply of water, gas or other public service; and a Class C felony if the offense creates a substantial and unreasonable risk of death or great bodily harm to another. All other offenses against computer data and programs under current law are Class A misdemeanors.

Specify that if a person disguises the identity or location of the computer at which he or she is working while committing an offense against computer data and programs with the intent to make it less likely that he or she will be identified with the crime, the penalties could be increased as follows: (a) in the case of a misdemeanor, the maximum fine prescribed by law for the crime could be increased by not more than $1,000 and the maximum term of imprisonment prescribed by law for the crime may be increased so that the revised maximum term of imprisonment is 12 months; and (b) in the case of a felony, the maximum fine prescribed by law for the crime may be increased by not more than $2,500 and the maximum term of imprisonment prescribed by law for the crime may be increased by not more than two years.

b. *Images Depicting Nudity*. Modify the prohibition against making a photograph, film, videotape or other visual representation that depicts nudity by requiring that, at the time the recording (defined as the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound) is made, the subject of the depiction be both nude and in a place and circumstance in which he or she can reasonably expect privacy. Specify that no one may copy, possess, exhibit, store or distribute a recording of an image without the subject's consent if the reproducer knows or should know that the original recording was unlawfully made. Under the bill, the prohibitions against possessing and distributing representations depicting nudity are treated similarly to the prohibition against making reproductions. As under current law, both offenses are Class E felonies. Similar to current law, exemptions are provided for parents, guardians and legal custodians who record, copy, possess, exhibit, store or distribute a recording of their nude child, if not done for commercial purposes.

Under current law, producing, possessing, or distributing a photograph, motion picture, videotape, or other visual representation or reproduction that depicts nudity is prohibited if the person depicted nude did not consent to the representation or reproduction and if the person who makes, possesses, or distributes the representation or reproduction knows or should know

that the person depicted nude did not consent to the nude depiction. The State Supreme Court recently found this prohibition unconstitutional because it prohibits all depictions of nudity made without consent, including artistic, political, or newsworthy depictions that are protected by the First Amendment.

c. *Obscene Material or Performances.* In connection with the definition of obscene material: (a) delete the term "sound recording" and instead include the term "other recording" as material that may be obscene; and (b) define "recording" to be the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound. Modify current law to apply criminal penalties to anyone who "plays" or "distributes" obscene material with knowledge of the character and content of the material or performance and for commercial purposes, or plays or distributes such materials to persons under 18 years old. Specify that in determining whether material is obscene, a judge or jury is required to examine the recording of images in the context of the work in which they appear.

Create a criminal penalty specifying that whoever sends an unsolicited electronic mail solicitation to a person that contains obscene material or a depiction of sexually explicit conduct without including the words "ADULT ADVERTISEMENT" in the subject line of the electronic mail solicitation is guilty of a Class A misdemeanor. "Electronic mail solicitation" means an electronic mail message, including any attached program or document, that is sent for the purpose of encouraging a person to purchase property, goods, or services.

d. *Sexual Exploitation of a Child and Child Enticement*. Modify provisions related to the offenses of sexual exploitation of a child and child enticement to specify that recordings (the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound) are included in connection with these offenses.

e. *Exposing a Child to Harmful Materials or Harmful Descriptions or Narrations.* Delete the definitions of "knowledge of the nature of the description or narrative account" (knowledge of the character and content of a harmful description or narrative account) and "knowledge of the nature of the material" (knowledge of the character and content of any material described in the material). In connection with the criminal penalty for the offense, modify current law to specify that it applies to whoever has knowledge of the "character and content" of the material, rather than the "nature" of the material. Further, specify that the penalty applies to anyone who not only sells, rents, exhibits or loans harmful material to a child, but also anyone who plays or distributes. Create statutory language specifying that the criminal penalty for anyone who sells, rents, exhibits, plays, distributes or loans to a child any harmful material, with or without monetary consideration, applies if: (a) the person knows or reasonably should know that the child has not attained the age of 18 years; or (b) the person has face-to-face contact with the child before or during the sale, rental, exhibit, playing, distribution, or loan. Create statutory language specifying that the criminal penalty for anyone who possesses harmful material with the intent to sell, rent, exhibit, play, distribute or loan the material to a child, applies if: (a) the person knows or reasonably should know that the child has not attained the age of 18 years; or (b) the person has face-to-face contact with the child.

f. *Possession of Child Pornography*. Create a criminal penalty specifying that whoever exhibits or plays a recording of a child engaged in sexually explicit conduct is guilty of a Class E felony, if all of the following apply: (a) the person knows that he or she has exhibited or played the recording; (b) before the person exhibited or played the recording, he or she knew the character and content of the sexually explicit conduct; and (c) before the person exhibited or played the recording, he or she knew or reasonably should have known that the child engaged in sexually explicit conduct had not attained the age of 18 years.

g. *Effective Date of Penalty Provisions.* The provisions related to computer crimes, obscenity, nudity and pornography would first apply to offenses committed on the effective date of the bill.

Senate: Delete the Governor's provision related to images depicting nudity. Instead, provide that taking a photograph or making a motion picture, videotape, or other visual representation of the person who is nude in a place and circumstance in which he or she has a reasonable expectation of privacy is a Class E felony, if the person taking the photograph or making the motion picture, videotape, or other visual representation knows or has reason to know that the nude person does not know of and consent to the taking of the photograph or the making of the motion picture, videotape, or other visual representation.

Specify that making a reproduction of a photograph, motion picture, videotape, or other visual representation that the person knows or has reason to know was made in violation of the previous paragraph and that depicts the illegally-made depiction of nudity is a Class E felony, if the person depicted nude in the reproduction did not consent to the making of the reproduction.

Modify current law to specify that possessing or distributing a photograph, motion picture, videotape, or other visual representation or reproduction that depicts nudity and that was taken or made in violation of either of the above two paragraphs is a Class E felony, if the person possessing or distributing the representation or reproduction knows or has reason to know that the photograph, motion picture, videotape, or other visual representation or reproduction was taken or made in violation of either of the above two paragraphs and if the person depicted nude in the representation or reproduction did not consent to the possession or distribution.

As under current law, specify that the above provisions do not apply to a parent, guardian, or legal custodian of a child making, possessing, or distributing a photograph, motion picture, videotape, or other visual representation or reproduction that does not violate the statutory provisions regarding sexual exploitation of a child or possession of child pornography.

Conference Committee/Legislature: Maintain Governor's provisions.

[Act 16 Sections: 3940 thru 3951, 3952 thru 3966, 3967 thru 3984 and 9359(1)]

9. THEFT OF A RENTED OR LEASED MOTOR VEHICLE

Governor/Legislature: Specify that intentional failure to return a rented or leased motor vehicle constitutes a theft at any time after the written lease or written rental agreement expires. The provision first applies to lease or rental agreements that expire on the effective date of the bill. Under current law, a theft occurs when a person intentionally fails to return rented or leased personal property, including a motor vehicle, within 10 days after the lease or rental agreement expires. Applicable penalties vary depending upon the value of the personal property, ranging from a fine of not more than $10,000 or nine months in jail, or both, for property valued at $1,000 or less (Class A misdemeanor) to a fine of not more that $10,000 or not more than 10 years in prison and five years on extended supervision, or both, for personal property valued at over $2,500 (Class C felony).

[Act 16 Sections: 3939 and 9359(2)]

10. PRISONER LITIGATION DEFINITION OF CORRECTIONAL INSTITUTION

Governor: Delete the definition of a correctional institution (any state or local facility that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime including a state prison, the intensive sanctions program, a county jail and a house of correction) related to the commencement of civil actions. Modify the definition of prisoner to delete the requirement that the prisoner be detained in a correctional institution, and instead specify that a prisoner includes any person who is incarcerated, imprisoned or otherwise detained and who is in the custody of the Department of Corrections or of the sheriff, superintendent, or other keeper of a jail or house of correction or any person who is arrested or otherwise detained by a law enforcement officer. Current law provisions that prohibit prisoners from commencing a civil action or special proceeding with respect to prison or jail conditions until the person has exhausted all available administrative remedies continue to apply. [In a recent Wisconsin Court of Appeals case (State ex rel. Speener v. Gudmanson), it was determined that the current definition of "correctional institution" related to prisoner litigation does not include an out-of-state jail. As a result of that decision, persons who are in the custody of Corrections and placed in a jail or prison that is located outside of Wisconsin are not subject to the requirements of the laws related to prisoner litigation.]

Senate/Legislature: Delete provision.

11. FISCAL IMPACT STATEMENT ON CRIMINAL PENALTY BILLS

Senate/Legislature: Repeal the exemption from the fiscal estimate requirement for bills which only contain penalty provisions.

[Act 16 Section: 96w]

12. LIABILITY FOR INCARCERATION COSTS ASSOCIATED WITH CIVIL ACTIONS

Assembly/Legislature: Repeal the current law provisions related to plaintiff and county liability for incarceration costs associated with civil actions. Under current law, whenever a person is committed to jail for failure to pay in a civil action or under civil arrest for certain actions, the creditor, agent, or attorney is required to advance to the jailer, within 24 hours of the commitment, sufficient money to pay for the support of the person incarcerated during the time for which the prisoner may be imprisoned. If money is not advanced or, if during the time the prisoner is confined the money is expended in the support of the prisoner, the jailer is required to discharge the prisoner from custody. Any discharge by a jailer has the same effect as a discharge by order of the court. The word "support" includes medical and hospital care. Current law also provides that whenever a person is committed to jail because of refusal or failure to comply with any order of a court respecting the payment of maintenance payments or suit money in a divorce or legal separation action, it is not be necessary to advance to the jailer money to pay for the support of such a prisoner, but the county where the commitment is made is liable to the jailer for the support of the prisoner during imprisonment.

[Act 16 Sections: 3836t and 3871y]

13. PROPERTY DEVELOPMENT RIGHTS

Joint Finance: Provide that a person who sells property development rights for a period of 30 years or longer in real property or his or her heir or devisee must bring an action within three years after the sale of the property development rights to recover the difference between the value of the property development rights and the sale price of those rights or be barred. A person could bring such an action only if the following conditions are met: (a) the purchaser is a non-profit organization, the state, an agency of the state, or a political subdivision; and (b) the amount paid for the property development rights was at least 5% below the value of the property development rights. Provide that if the transfer of the property development rights involved a gift, a person could only recover for the portion of the transfer that was not a gift. Authorize a person having the right to bring this action to request that the Department of Justice bring the action on behalf of the person. If a person was successful in obtaining a judgment, require the court to include in the judgment compounded interest from the date that the property was sold, using the interest rate charged for delinquent property taxes by the county in which the property is located.

For the purpose of this provision, define the following terms to mean:

a. "Nonprofit organization" means an organization recognized under the Internal Revenue Code as a nonprofit organization that has jointly pursued or is currently pursuing the acquisition of property development rights with the state, a state agency, or a political subdivision.

b. "Political subdivision" means a city, village, town or county, or a department, division board or other agency of a city, village, town or county.

c. "Property development rights" means the property owner's nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which may include retaining or protecting natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, preserving a burial site or preserving the historical, architectural, archaeological, or cultural aspects of real property.

d. "Value" means the amount paid for comparable property development rights in an arm's-length sale completed within 12 months before the sale in question.

Senate: Delete provision.

Conference Committee/Legislature: Modify the Joint Finance provisions as follows: (a) provide that a person who sells property development rights for a period of 30 years or longer in real property or his or her heir or devisee would be required to bring an action within one year, rather than within three years, after the sale of the property development rights to recover the difference between the value of the property development rights and the sale price of those rights or be barred; (b) delete the provision authorizing a person having the right to bring such an action to request that the Department of Justice bring the action on behalf of the person; and (c) specify that these provisions would first apply to transactions for the sale of property development rights entered into on the effective date of the bill.

Veto by Governor [B-33]: Delete provision.

[Act 16 Vetoed Sections: 3862w and 9309(5z)]

14. TOBACCO PRODUCT SALES TO MINORS

Joint Finance: Provide that a defense to a prosecution of a retailer relating to the sale or provision for nominal or no consideration of cigarettes or tobacco products to any person under the age of 18, would be proof by a retailer that the act for which the retailer is being prosecuted was committed by his or her agent or employee and that the retailer provided training to the agent or employee on the prohibitions relating to the sale or provision of cigarettes or tobacco products to any person under the age of 18. Provide that the defense would not be available to a retailer who knowingly permits his or her agent or employee to sell, or provide for nominal or no consideration, cigarettes or tobacco products to individuals under the age of 18. Provide that these provisions would first apply to violations committed on the effective date of the bill.

Senate/Legislature: Delete provision.

15. STATE BALLAD AND STATE WALTZ

Joint Finance/Legislature: Enumerate in the statutes a state ballad ("Oh Wisconsin, Land of My Dreams") and a state waltz ("The Wisconsin Waltz"), list the author of the music and the words to the music for both the proposed state ballad and state waltz and require that the Wisconsin Blue Book include information on the state ballad and the state waltz. Currently, there is a state song, a state dance and 16 state symbols enumerated in the statutes.

[Act 16 Sections: 1d, 1f, 1g, 1j and 1x]

16. UNIFORM ELECTRONIC TRANSACTIONS ACT

Assembly: Adopt the Uniform Electronic Transaction Act (UETA), as approved by the National Conference of Commissioners on Uniform State Laws. Specify the following:

Definitions. Create the following definitions: (a) agreement; (b) automated transaction (a transaction conducted or performed, in whole or in part, by electronic means or by the use of electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction); (c) computer program; (d) contract; (e) electronic (relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities); (f) electronic agent (a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual); (g) electronic record (a record that is created, generated, sent, communicated, received, or stored by electronic means); (h) electronic signature (an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record); (i) governmental unit (defined as any of the following: an agency, department, board, commission, office, authority, institution, or instrumentality of the federal government or of a state or of a political subdivision of a state or special purpose district within a state, regardless of the branch or branches of government in which it is located; a political subdivision of a state or special purpose district within a state; an association or society to which appropriations are made by law; any body within one or more of the entities specified previously that is created or authorized to be created by the constitution, by law, or by action of one or more of the entities previously specified; or any combination of any of the entities specified as a governmental unit); (j) information; (k) information processing system; (m) record (information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form); (n) security procedure; (o) state (a state of the United States, the District of Columbia, Puerto Rico, the U. S. Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, including an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state); and (p) transaction (an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs).

Applicability. Specify that the provisions apply to electronic records and electronic signatures relating to a transaction. Specify that the provision do not generally apply to a transaction to the extent that it is governed by either any law governing the execution of wills or the creation of testamentary trusts, or the Uniform Commercial Code (other than the waiver or renunciation of claim or right after breach and the statute of frauds for kinds of personal property). Specify that: (a) a transaction subject to the UETA is also subject to other applicable substantive law; and (b) the UETA applies to the State unless expressly provided.

Use of Electronic Records and Signatures. Specify that the provisions do not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form. The provisions apply only to transactions between parties each of which has agreed to conduct transactions by electronic means. Specify that whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. Specify that a party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means and that the right granted by the provisions may not be waived by agreement.

Statutory Construction of the Provisions Governing Electronic Transactions. Specify that the provisions be construed and applied: (a) to facilitate electronic transactions consistent with other applicable law; (b) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and (c) to effectuate its general purpose to make uniform the law with respect to electronic transactions among states enacting laws substantially similar to the Uniform Electronic Transactions Act as approved and recommended by the National Conference of Commissioners on Uniform State Laws in 1999.

Legal Recognition of Electronic Records. Require that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form and that a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation. Specify that if a law requires a record to be in writing, an electronic record satisfies that requirement in that law and if a law requires a signature, an electronic signature satisfies that requirement in that law.

Provision of Information in Writing. Require that if parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, a party may satisfy the requirement with respect to that transaction if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt. Specify that an electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

Presentation of Records. Require that if another law requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, then: (a) the record must be posted or displayed in the manner specified in the other law; (b) the record shall be sent,

communicated, or transmitted by the method specified in the other law; and (c) the record must contain the information formatted in the manner specified in the other law. Specify that if a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

Specify that in regard to providing information in writing and presenting records, the requirements may not be varied by agreement, but: (a) to the extent another law requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement that the information be in the form of an electronic record capable of retention may also be varied by agreement; and (b) a requirement under another law to send, communicate, or transmit a record by 1st-class or regular mail or with postage prepaid may be varied by agreement to the extent permitted by the other law.

Attribution and Effect of Electronic Records. Create provisions related to the attribution and effect of electronic records and electronic signatures. Specify procedures related to a change or error in an electronic record in a transmission between parties to a transaction for: (a) parties that agreed to use security procedures to detect changes or errors and only one party has conformed to the procedure; or (b) individuals. For all other parties, specify that the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any. Specify that procedures related to changes or error for individuals and for parties other than those that agreed to use security procedures may not be varied by agreement.

Notarization and Acknowledgement. Specify that if a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to administer the oath or to make the notarization, acknowledgment, or verification, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Retention of Records. Specify that if a law requires that a record be retained, the requirement is satisfied by retaining the information set forth in the record as an electronic record which: (a) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and (b) remains accessible for later reference. The provision specifies that a requirement to retain a record does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received. Specify that if a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, a person may comply with that law by using an electronic record that is retained in accordance with provisions. Specify that if a law requires retention of a check, that requirement is satisfied by retention of an electronic record containing the information on the front and back of the check in accordance with the provisions. Specify that a record retained as an electronic record satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of the provision, specifically prohibits the use of an electronic record for the specified purpose. Under the provisions, a governmental unit is not precluded

from specifying additional requirements for the retention of any record subject to the jurisdiction of that governmental unit.

Admissibility of Records in Evidence. Specify that in a proceeding, a record or signature may not be excluded as evidence solely because it is in electronic form.

Automated Transactions, Sending and Receipt of Records and Transferable Records. Create provisions related to the formation of contracts by interaction of electronic agents, specifying what constitutes sending and receipt of an electronic record, the timing and place of sending and receiving an electronic record and the transfer and transferability of electronic records.

Agency Rules. Delete the responsibility for the Department of Financial Institutions to promulgate rules related to electronic forms and electronic signatures for records submitted to a governmental unit. Specify that unless otherwise provided by law, with the consent of a governmental unit in Wisconsin that is to receive a record, any record that is required by law to be submitted in writing to that governmental unit and that requires a written signature may be submitted as an electronic record, and if submitted as an electronic record may incorporate an electronic signature. Require the Department of Administration to promulgate rules concerning the use of electronic records and electronic signatures by governmental units, which will govern the use of electronic records or signatures by governmental units, unless otherwise provided by law. Create a nonstatutory provision, specifying that DOA is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Specify that DOA and the Secretary of State must jointly promulgate rules establishing requirements that, unless otherwise provided by law, a notary public must satisfy in order to use an electronic signature for any attestation. Specify that the joint rules be numbered as rules of each agency in the Wisconsin Administrative Code. Create a nonstatutory provision specifying that the Secretary of State and DOA must promulgate initial rules related to notary publics to become effective no later than January 1, 2004.

Miscellaneous Provisions. Specify that if a governmental unit adopts standards regarding its receipt of electronic records or electronic signatures, the governmental unit must promote consistency and interoperability with similar standards adopted by other governmental units in Wisconsin and other states and the federal government and nongovernmental persons interacting with governmental units. Specify that any standards adopted may include alternative provisions if warranted to meet particular applications.

Exclude records governed by the electronic transaction and records provisions from current law provisions related to photographic copies of business records as evidence and the admissibility of duplicates.

Initial Applicability. Specify that provisions related to electronic transactions and records first apply to electronic records or electronic signatures that are created, generated, sent, communicated, received, or initially stored on the effective date of the provision.

Conference Committee/Legislature: Delete provision.

17. COLLECTION OF PERSONALLY IDENTIFIABLE INFORMATION FROM INTERNET USERS

Assembly/Legislature: Specify that no state authority (defined as a state elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, rule or order; a state governmental or quasi-governmental corporation; the Supreme Court or Court of Appeals; the Assembly or Senate; or a nonprofit corporation operating the Olympic Ice Training Center) that maintains an internet site may use that site to obtain personally identifiable information from any person who visits that site without the consent of the person from whom the information is obtained. Specify that this prohibition would not apply with respect to the acquisition of internet protocol addresses. Define "internet protocol address" to mean an identifier for a computer or device on a transmission control protocol–internet protocol network.

Under current law, personally identifiable information is defined as information that can be associated with a particular individual through one or more identifiers or other information or circumstances. In addition, any person who willfully collects, discloses or maintains personally identifiable information in violation of federal or state law may be required under current law to forfeit not more than $500 for each violation.

[Act 16 Sections: 389e and 389m]

18. PERFORMANCE REVIEW PILOT PROGRAM

Assembly/Legislature: Require DOR to establish a pilot program to study governmental services delivered by and to certain governmental units (any city, village, town or county with a population greater than 2,500). Direct DOR to solicit counties and municipalities to participate in the program and select five units, of which at least one is a county and one is a municipality, all of which have a population exceeding 2,500.

Direct each participating government to create a five-member council by January 1, 2002, consisting of the following members appointed by the government's chief executive officer: (a) the government's chief executive officer, or that person's designee; (b) an employee of the governmental unit; (c) a resident of the governmental unit with cost accounting experience, but who is not an officer or employee of the governmental unit; and (d) two additional residents of the governmental unit who are not officers or employees of the governmental unit. Require the governmental unit's chief executive officer to appoint two members to initial terms of two years and two to terms of four years, but specify that successors' terms are for four years. Require the council to select a chairperson at its first meeting of each year. Specify that a quorum consists of four members.

Direct the councils to conduct an analysis (defined as a performance analysis of the cost and benefit of government providing a service compared to a private person) of the services provided by the governmental unit that includes: (a) establishing benchmarks for performance, including goals related to intergovernmental cooperation to provide governmental services; (b) conducting research and establishing new methods to promote efficiency in governmental service delivery; and (c) identifying and recommending collaborative agreements to be developed with other governmental units for delivering governmental services. Define governmental service to include services related to law enforcement, fire protection, emergency services, public health, solid waste collection and disposal, recycling, public transportation, public housing, animal control, libraries, recreation and culture, human services and youth services.

Authorize councils to conduct analyses of governmental services at their own initiative or based on suggestions or complaints. Authorize councils to receive written suggestions regarding delegating governmental services to private persons or reviewing governmental services that have been delegated to private persons and to receive written complaints regarding governmental services that compete with identical or similar services provided by private persons. Require councils to meet to decide whether each suggestion or complaint shall be the subject of an analysis. Allow a council to hold hearings, conduct inquiries and gather data to make this decision. Require each analysis conducted by a council to include the following determinations: (a) the costs of providing the service, including personnel and capital asset costs; (b) the frequency, extent and quality of the service; (c) the costs and benefits of the services, based on the preceding determinations; (d) whether or not a private person can provide the governmental service at a cost savings to the government at a quality equal to that provided by the governmental unit; and (e) whether the service should be retained in its present form, modified or eliminated, if the council determines a service is not appropriate for delegating to a private person. Require councils to make recommendations, which shall be published, after the completion of each analysis that specify each recommendation's impact on the governmental unit and the unit's employees.

Require each council to submit reports to DOR on or before June 30 of both 2002 and 2003. Require each report to describe the council's activities. Require the final reports to also include a description of the council's recommendations, the extent to which its recommendations have been adopted by the governmental unit and a detailed explanation of all analyses conducted by the council. Require DOR to submit a report to the Legislature and the Governor that summarizes the activities and recommendations contained in the council reports it received and that describes ways that those recommendations could be implemented on a statewide basis. Require the DOR report to be submitted on or before July 31, 2003.

Require the board of regents of the University of Wisconsin System to direct the University of Wisconsin System-Extension to assist councils and to work with the League of Wisconsin Municipalities, the Wisconsin Alliance of Cities, the Wisconsin Towns Association and the Wisconsin Counties Association to provide training on performance standards. Require

the board of regents to ensure that council members are trained to: (a) conduct analyses of governmental services; (b) determine ways to improve the efficiency of delivering governmental services; (c) establish, quantify and monitor performance standards; and (d) prepare the reports the councils must submit to DOR.

[Act 16 Sections: 2022s and 9156(1d)]

19. AREA COOPERATION COMPACTS

Assembly/Legislature: Specify that an area cooperation compact must provide a plan for any municipalities or counties that enter into the compact to collaborate to provide certain governmental services. Enumerate the following services for inclusion in compacts: (a) law enforcement; (b) fire protection; (c) emergency services; (d) public health; (e) solid waste collection and disposal; (f) recycling; (g) public transportation; (h) public housing; (i) animal control; (j) libraries; (k) recreation and culture; (l) human services; and (m) youth services. Require compacts to provide benchmarks to measure the plan's progress and provide outcome-based performance measures to evaluate the plan's success. Require municipalities and counties that enter into compacts to structure the compact in a way that results in significant tax savings to taxpayers within those municipalities and counties.

Require municipalities in cooperation regions to enter into a compact with at least two other municipalities or counties, or with any combination of at least two such entities, to perform at least two of the enumerated services in 2003 through 2005. Require municipalities in cooperation regions to enter into a compact with at least four other municipalities or counties, or with any combination of at least four such entities, to perform at least five of the enumerated services in 2006 and thereafter. Specify that the municipality must be within the same cooperation region as the other municipalities or counties that are parties to the compact. Define cooperation region as a federal standard metropolitan statistical area. Provide that if only part of a county is located in a standard metropolitan statistical area then the entire county is considered to be located in that area. Specify that if a municipality is not adjacent to at least two other municipalities in the same cooperation region, the municipality may enter into a compact with any adjacent municipality or with the county in which the municipality is located to perform the number and type of services specified above.

Require municipalities to annually certify to DOR, by May 1, that they have entered into the required number of compacts covering the required types of services for the following year. Require each municipality to annually submit to DOR, on or before June 30, a report that indicates whether it has entered into any agreements with any other municipality or county in the same cooperation region related to: (a) establishment of performance standards for delivery of governmental services by governmental units within a federal standard metropolitan statistical area; (b) collaborative service delivery; (c) reduction or elimination of overlapping service delivery; (d) municipal revenue sharing; (e) smart growth planning; (f) metropolitan service delivery (defined as any governmental service provided to a city that is provided by the

city or by another city or by a town, village or county and provided on a multijurisdictional basis); (g) financial incentives for shared regional planning services; (h) boundary issues; and (i) other intergovernmental issues. Specify that these requirements are imposed beginning in 2002.

Authorize DOR to grant municipalities additional time to submit the June 30 reports upon a showing of good cause. Direct the Legislative Audit Bureau to prepare a report on the performance of area cooperation compacts and submit copies of the report to the chief clerk of each house of the Legislature for distribution to the appropriate standing committees by June 30 of each year, beginning in 2004.

Veto by Governor [F-21]: Delete the 2005 sunset date relative to the initial requirements for area cooperation compacts and remove the additional requirements relating to the number of governments and number of services that would be imposed beginning in 2006. As a result, municipalities in cooperation regions will be required to maintain cooperation compacts with at least two other governments covering at least two services in each year, beginning in 2003.

[Act 16 Section: 2022t]

[Act 16 Vetoed Section: 2022t]

20. CITY OF MILWAUKEE COMPTROLLER

Senate: Modify the definition of public office as it pertains to cities of the first class to include the office of city comptroller. Specify that this provision first applies upon the expiration of the term of the comptroller in office on the effective date of the biennial budget. This provision would apply to the City of Milwaukee and would convert the office of city comptroller from an elected to an appointive position. The comptroller would be appointed by the mayor and confirmed by the common council.

Conference Committee/Legislature: Delete provision.

21. NEWSPAPERS ELIGIBLE TO PUBLISH LEGAL NOTICES

Senate: Specify that newspapers in Wisconsin are eligible to receive compensation or fees from counties and underlying local governments for publishing legal notices if the newspaper meets the following conditions: (a) the newspaper is a free publication with a circulation, pick-up rate of 50,000 or more in the newspaper's county or multicounty service area; (b) the newspaper's circulation, pick-up rate is audited by an independent auditing firm using generally accepted auditing standards; (c) the newspaper has been published continuously for the ten years immediately before the publication of the notice; (d) the newspaper has at least 2,500 copies of the newspaper picked up by readers from distribution points within the county; and (e) the newspaper is headquartered or published in a county having a population of 500,000

or more. Under current law, newspapers are eligible for compensation or fees for publishing legal notices if, in two of the five years before the notice is published, the newspaper meets the following criteria: (a) the newspaper has been published regularly and continuously in the municipality where the notice is to be published; and (b) the newspaper has a bona fide paid circulation that constitutes 50% or more of its circulation and has maintained minimum circulation levels. State law sets the minimum circulation levels at not less than 1,000 copies if the newspaper is published in a first or second class city and not less than 300 copies if the newspaper is published in a third or fourth class city, a village or a town.

Conference Committee/Legislature: Delete provision.

22. WITHDRAWAL OF TOWNS FROM COUNTY ZONING ORDINANCES AND DEVELOPMENT PLANS

Assembly: Authorize town boards to adopt zoning ordinances after December 31, 2003, even if the town board has not been granted the authority to exercise village powers by the town meeting or through referendum. Authorize town boards to enact an ordinance withdrawing the town from coverage by a county zoning ordinance and development plan and, in such cases, remove the county board's authority to approve town zoning ordinances. Limit withdrawals to ordinances enacted either after December 31, 2003, and before January 1, 2005, or after December 31, 2010, and before January 1, 2012, or within comparable time periods that recur on a five-year cycle. Require town clerks to provide written notice to the county clerk of the town's intent to enact an ordinance, not later than 60 days before the ordinance is enacted.

Require town boards wishing to withdraw from county zoning ordinances and county development plans to enact zoning ordinances, official maps and comprehensive plans not later than 60 days before the town may enact a withdrawal ordinance. Require the town zoning ordinance and comprehensive plan adopted prior to a withdrawal ordinance to be consistent with each other and require the town zoning ordinance to be at least as restrictive as the county ordinance that applies to the town on January 1 of the year before the year in which the town enacts the withdrawal ordinance. Provide that the town clerk must send a certified copy of the town's zoning ordinance, official map and comprehensive plan to the county clerk for the town's withdrawal ordinance to take effect. Provide that zoning ordinances, comprehensive plans and official maps adopted by towns in conjunction with a withdrawal ordinance take effect on the first day of the third month beginning after certified copies of the documents are sent to the county clerk. Require county development plans to include and integrate, without change, the master plan and official map that a town has adopted under this procedure.

Authorize county boards to enact an ordinance repealing all of the county's zoning ordinances and its development plan at any time after December 31, 2004, if the board notifies, in writing, all of the towns subject to the county's zoning ordinances. Provide that an ordinance that repeals county zoning ordinances would not be effective until one year after the enactment of that ordinance. Exclude county shoreland zoning or floodplain zoning ordinances from this

provision. Require town boards to enact zoning ordinances, an official map and a comprehensive plan if the county notifies the town that the county has repealed its zoning ordinances. Provide that the town's zoning ordinances, official map and comprehensive plan take effect on the effective date of the repeal of the county zoning ordinances. Require the town's zoning ordinances and comprehensive plan to be consistent with each other and require the town's zoning ordinances to be as restrictive as the county's ordinance in effect on the day before its repeal.

Conference Committee/Legislature: Delete provision.

23. STANDARDS FOR GRANTING ZONING VARIANCES

Assembly: Modify current law provisions that allow county boards of adjustment and municipal boards of appeal to authorize variances to their respective zoning ordinances if a literal enforcement of the ordinance will result in unnecessary hardship by defining unnecessary hardship as a demonstration that strict compliance with an area zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome.

Conference Committee/Legislature: Delete provision.

24. NOTICE REQUIREMENTS TO PERSONS AFFECTED BY COUNTY OR MUNICIPAL PLAN OR ZONING ACTION

Assembly: Make the following modifications to current law provisions regarding county, town and city zoning.

County Development Plans and Zoning Ordinances. Require county development plans to indicate any effect the plan will have on changing the allowable use of any property. Require the public notice related to proposed county zoning ordinances, or amendments to an ordinance, that change the allowable use of any property to include either a map or description of the property affected by the ordinance and a statement that a map may be obtained from the zoning agency. Require the county zoning agency to maintain a list of persons who submit a written request to receive notice of any proposed zoning ordinance or amendment or of any amendment to a development plan that affects the allowable use of the person's property. Require county zoning agencies to send a notice containing a copy of any proposed zoning ordinance or county development plan, or any amendment to a zoning ordinance or development plan, to each person on the list. Require the agency to send the notice by mail, electronic mail or in any reasonable form that is agreed to by the person and the agency. Authorize the county zoning agency to charge each person on the list a fee for the notice. Set the annual fee for the notice at $12 or an amount that does not exceed the approximate cost of providing the notice to the person.

Town Zoning Ordinances. Require town zoning committees to provide a class 2 notice for public hearings on preliminary reports that recommend zoning district boundaries, regulations and restrictions. Require the notice to state the time and place of the hearing. Require town boards to provide a class 2 notice for public hearings on proposed zoning ordinances. Require the notice to state the time and place of the hearing. Require the public notice to include either a map or description of the property affected by the ordinance and a statement that a map may be obtained from the town board if the proposed zoning ordinance has the effect of changing the allowable use of any property. Require the town board to maintain a list of persons who submit a written request to receive notice of any proposed zoning ordinance or amendment that affects the allowable use of the person's property. Require town boards to send a notice containing a copy of any proposed zoning ordinance or of any proposed amendment to a zoning ordinance to each person on the list if the town board is prepared to vote on the proposed zoning amendment or the proposed zoning ordinance, provided the town zoning committee has completed a final report on the proposed ordinance. Require the town board to send the notice by mail, electronic mail or in any reasonable form that is agreed to by the person and the board. Authorize the town board to charge each person on the list a fee for the notice. Set the annual fee for the notice at $12 or an amount that does not exceed the approximate cost of providing the notice to the person.

City Plans and Zoning Ordinances. Require any treatment of a master plan by a city plan commission to indicate, in the form of descriptive material, reports, charts, diagrams or maps, any effect the treatment will have on changing the allowable use of any property. Require public notices for a proposed district plan, changes to that plan or any proposed amendment to that plan to include either a map or a description of affected property and a statement that a map may be obtained from the city council. Extend this requirement to any plan, change or amendment that would have the effect of changing the allowable use of any property affected by the plan. Require the city council to maintain a list of persons who submit a written request to receive notice of any proposed zoning action or any treatment of a master plan that affects the allowable use of the person's property. Require city councils to send a notice containing a copy of any tentative recommendations, proposed changes to district plans and regulations, or proposed amendments to zoning ordinances to each person on the list if the city council is prepared to vote on any of the following: (a) tentative recommendations related to plans and regulations for a district in the city; (b) proposed changes to proposed plans and regulations for a district in the city; (c) proposed amendments to zoning ordinances; and (d) any treatment of a master plan. Require the council to send the notice by mail, electronic mail or in any reasonable form that is agreed to by the person and the city council. Authorize the city council to charge each person on the list a fee for the notice. Set the annual fee for the notice at $12 or an amount that does not exceed the approximate cost of providing the notice to the person.

Conference Committee/Legislature: Delete provision.

25. REGULATION OF THE SALE AND TRANSPORTATION OF FIREWORKS

Senate/Legislature: Authorize resident wholesalers to sell regulated fireworks to any nonresident person if the nonresident person gives the wholesaler a signed statement indicating that the fireworks are for use outside of this state. Authorize nonresident persons to transport fireworks to an out-of-state location and to stop in any Wisconsin municipality for up to 12 hours while en route to the out-of-state destination. Specify that a person who intends to lawfully sell regulated fireworks may possess the fireworks without first obtaining a fireworks permit. Authorize state traffic patrol officers to enforce the permit requirement for the possession and use of fireworks, where applicable, on highways and to issue uniform traffic citations for violations of the permit requirement. Prohibit courts from forwarding a record of conviction for violation of the permit requirement to DOT. Prohibit DOT from assessing any demerit points against driving records for convictions for violations of the permit requirement. Remove the authority to seize fireworks that are possessed or used in violation of fireworks statutes or ordinances, unless the violation is subject to criminal penalties under state statute.

Veto by Governor [B-127]: Delete provision.

[Act 16 Vetoed Sections: 2599m, 2599mg, 2881ae thru 2881ap, 3427t and 3427tg]

26. COMPENSATION FOR TOWN OFFICIALS

Assembly/Legislature: Authorize town meetings to establish the hourly wage for town employees who are also elected town officers unless the town meeting delegates that authority to the town board. Specify that town meetings may not delegate that authority in cases where the employee is a town supervisor. Establish a limit on hourly wages of $5,000 per year. Specify that amounts paid as hourly wages may be paid in addition to amounts received as compensation for holding an elective office or for serving as a volunteer fire fighter, emergency medical technician or first responder. Specify that the $5,000 limit includes amounts paid to a supervisor who is acting as superintendent of highways. Specify that it is compatible for an elected officer of a town to receive wages for work performed for the town.

[Act 16 Sections: 2003pc, 2003pe, 2003sc, 2003se, 2003sg and 2022td]

27. DISPOSAL OF PERSONAL PROPERTY BY TOWN MEETING

Assembly/Legislature: Repeal the authority for town meetings to authorize town boards to dispose of personal property of the town. Under current law, a town meeting may authorize a town board to dispose of real or personal property owned by the town, unless the property has been donated and the town is required to hold the property as a condition of the donation. Current law provisions pertaining to real property would not be changed.

[Act 16 Section: 2003pd]

28. LIMIT ON TOWN HIGHWAY AND BRIDGE EXPENDITURES

Assembly/Legislature: Modify the current annual limit on town spending on machinery, implements, material and equipment needed for construction and repair of town highways and bridges by including maintenance activities under the limit and by converting the limit from $10,000 for all such construction and repair expenditures to $5,000 per mile for all such construction, maintenance and repair expenditures. Modify the current law provision regarding the passage of a referendum to exceed the limit to reflect these changes, effective with referenda called on the effective date of the biennial budget act.

[Act 16 Sections: 2294p, 2294pc and 9352(5k)]

29. TOWN SANITARY DISTRICT PUBLIC WORKS CONTRACTS

Assembly/Legislature: Increase the threshold at which a town sanitary district commission must let a contract to the lowest responsible bidder and at which the local public contract bidding requirements apply from $5,000 to $15,000, first applying to contracts that are let on the effective date of the bill.

[Act 16 Sections: 2003tm and 9359(6k)]

30. TREATMENT OF FEDERALLY CHARTERED GROUPS BY STATE AND LOCAL GOVERNMENTS

Assembly: Provide that no state agency, state authority or local governmental unit, all as defined under current law, may treat a federally chartered corporation differently than it treats any other organization in the use or rental of the grounds, buildings, facilities or equipment of the agency or authority. Provide that a state agency, state authority or local governmental unit may not use the membership or leadership policies of a federally chartered organization as the basis for denying use or rental of its grounds, buildings, facilities or equipment if the agency, authority or unit establishes membership or leadership policies with respect to users or renters of its property. Define federally chartered corporation as an organization that is listed in 36 USC subtitle II, part B. This definition includes a variety of patriotic and national organizations, including such organizations as the American Legion, Big Brothers-Big Sisters of America, Boy Scouts and Girl Scouts of America, Boys and Girls Clubs of America, Future Farmers of America, Little League Baseball, Veterans of Foreign Wars and Vietnam Veterans of America, plus many others.

Conference Committee/Legislature: Delete provision.

31. FUNDS OF MUNICIPAL FIRE, EMERGENCY MEDICAL TECHNICIAN OR FIRST RESPONDER DEPARTMENTS

Assembly/Legislature: Authorize municipalities to enact ordinances to create accounts in the name of the municipality's fire, emergency medical technician or first responder departments in public depositories. Require the ordinance to designate an official or employee of those departments to deposit volunteer funds in the account and have exclusive control over the expenditure of volunteer funds from the account. Define volunteer funds as funds raised by or donated to a municipality's fire, emergency medical technician or first responder department. Allow the municipal ordinance to limit the type and amount of funds that may be deposited in the account, the amount of withdrawals from the account that may be made or the purposes for which withdrawals may be made. Allow the municipal ordinance to impose reporting and auditing requirements relative to the account. Specify that volunteer funds remain the property of the municipality until disbursed.

[Act 16 Sections: 2003sd, 2003u, 2003ve, 2003we, 2003wg, 2022tf and 2022th]

32. DANE COUNTY REGIONAL PLANNING COMMISSION

Senate: Repeal the 1999 Act 9 provision that dissolves the Dane County Regional Planning Commission on October 1, 2002. Remove related provisions regarding unexpended funds and outstanding indebtedness.

Assembly: Modify the 1999 Act 9 provision that dissolves the Dane County Regional Planning Commission by changing the date of dissolution from October 1, 2002, to the first day of the third month beginning after the effective date of the biennial budget act.

Conference Committee/Legislature: Include Senate provision.

Veto by Governor [B-34]: Delete provision.

[Act 16 Vetoed Section: 4046s]

33. CUT-OFF PERIOD FOR RECEIPT OF DOCUMENTS BY REGISTERS OF DEEDS

Assembly: Modify the current law provision that authorizes county boards to set the cut-off reception time for filing and recording documents by the register of deeds from 30 minutes to one hour before the end of the business day. State law requires register of deeds offices to remain open during usual business hours. However, documents delivered to offices during the last half-hour can be filed and recorded on the succeeding business day, if authorized by ordinance of the county board. This time can be used to complete the processing, recording and indexing of documents filed that day. This provision would advance the cut-off period by 30 minutes.

Conference Committee/Legislature: Delete provision.

34. CREATION OF A PLEA OF GUILTY BUT MENTALLY ILL

Assembly: Provide that a defendant charged with a homicide offense may plead guilty but mentally ill. The applicable homicide offenses would include: first-degree intentional homicide; first-degree reckless homicide; felony murder; second-degree intentional homicide; second-degree reckless homicide; homicide resulting from the negligent control of a vicious animal; homicide by the negligent handling of a dangerous weapon, explosives or fire; homicide by the intoxicated use of a vehicle or firearm; and homicide by the negligent operation of a vehicle. Define "mental illness" to mean a substantial disorder of thought, mood or behavior that afflicted a person at the time that he or she engaged in criminal conduct and that impaired the person's judgment. Provide that a person may be found guilty but mentally ill if, at the time the person engaged in criminal conduct, he or she was suffering from a mental illness but did not lack substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law as a result of mental disease or defect. A person who is found guilty but mentally ill would not be relieved of criminal responsibility.

Under current law, a person may plead guilty, not guilty, no contest, subject to the approval of the court, or not guilty by reason of mental disease or defect (this plea may be joined with a plea of not guilty, but if not so joined, the plea admits that but for lack of mental capacity the defendant committed all the essential elements of the offense charged).

Provide that, if a defendant charged with a homicide crime has entered a plea of not guilty by reason of mental disease or defect and has been examined by a court-appointed physician or psychologist, the defendant may waive his or her right to a trial and, with the approval of the district attorney, withdraw the plea of not guilty by reason of mental disease or defect and, instead of a plea of guilty or no contest, enter a plea of guilty but mentally ill.

Provide that the court may accept a plea of guilty but mentally ill only if all of the following apply: (a) the court, with the defendant's consent, has reviewed the reports of all the examinations conducted by a court-appointed physician or psychologist; (b) the court holds a hearing on the issue of the defendant's mental illness and allows the parties to present evidence at the hearing; (c) based on the review of reports provided by a court-appointed physician or psychologist and any evidence or arguments presented at the hearing, the court is satisfied that the defendant was mentally ill at the time that he or she committed the criminal offense charged; and (d) the defendant states that he or she is willing to participate in appropriate mental health treatment that is recommended by a physician, psychologist or mental health worker who is responsible for his or her mental health care and treatment. Require that, if the court reviews the reports provided by a court-appointed physician or psychologist, the court must make the report a part of the record of the case.

If a defendant has entered a plea of not guilty by reason of mental disease or defect and the defendant's plea is tried by a jury, the court would be required, in addition to providing to the jury the information required in connection with the plea of not guilty by reason of mental disease or defect, to inform the jury that the jury may find the defendant guilty but mentally ill if all of the following apply: (a) the jury finds beyond a reasonable doubt that the defendant did not lack substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law as a result of mental disease or defect; and (b) the jury finds to a reasonable certainty by the greater weight of the credible evidence that the defendant was mentally ill at the time that he or she committed the offense. The court must also inform the jury that, if the jury finds the defendant guilty but mentally ill, the defendant will receive a criminal sentence or probation and may be required to receive treatment for his or her mental illness.

If a defendant is found guilty but mentally ill, the court would be required to enter a judgment of conviction and to impose a sentence, impose a sentence, but stay its execution, or withhold sentence. If the court places a defendant who is found guilty but mentally ill on probation or sentences a defendant who is found guilty but mentally ill to prison, the court would be required to do all of the following: (a) order the Department of Corrections (DOC), or a person designated by DOC, to evaluate the defendant to determine the defendant's treatment needs; and (b) order the Department to provide or arrange for the provision of necessary and appropriate treatment for the defendant's mental illness.

Provide that, if a defendant who is found guilty but mentally ill, is serving a sentence of imprisonment or is confined as a condition of probation, he or she may be transferred or committed for treatment to the Department of Health and Family Services (DHFS). Provide that any time spent by the defendant in a state treatment facility due to a transfer or commitment would be included as part of the individual's sentence. If an individual found guilty but mentally ill is subsequently involuntarily committed, DHFS or the county department of social or human services, whichever is applicable, would be required to prepare a report for DOC, upon the individual's discharge, that contains all of the following: (a) the individual's diagnosis; (b) a description of the individual's behavior before and while he or she was in the treatment facility; (c) the course of treatment of the individual while he or she was in the treatment facility; (d) the prognosis for the remission of symptoms and the potential for recidivism and for presenting a danger to himself or herself or others; and (e) recommendations for future treatment. If an individual was found guilty but mentally ill and was subsequently transferred to or detained in a state treatment facility, DHFS would be required to prepare this same report for DOC upon the individual's discharge.

If a defendant who is found guilty but mentally ill is sentenced to prison, the clerk of court would be required to attach all of the following to the judgment of conviction that is delivered with the defendant to the DOC reception center: (a) a copy of any report of an examination conducted by a court-appointed physician or psychologist; (b) a copy of any other report that was admitted into evidence at a hearing relating to a plea of guilty but mentally ill; and (c) a

copy of any other report that was admitted into evidence at a trial based on a plea of not guilty by reason of mental disease or defect.

Provide that any inmate who was found guilty but mentally ill and who is subsequently released on extended supervision would be required as a condition of his or her extended supervision to participate in any necessary and appropriate treatment that is recommended by DOC or DHFS. In determining what treatment, if any, to recommend as a condition of the inmate's extended supervision, DOC would be required to consider any reports prepared by DHFS.

Except for first-degree intentional homicide, or if probation is prohibited for a particular offense by statute, the court would be permitted to place the person on probation, for a period not less than five years, if the court withholds sentence or imposes sentence and stays its execution. If a defendant is placed on probation, the court would be required to do all of the following: (a) order DOC, or a person designated by DOC, to evaluate the defendant to determine the defendant's treatment needs; (b) order that DOC provide or arrange for the provision of necessary and appropriate treatment that is recommended as a result of the evaluation; and (c) order as a condition of probation that the defendant undergo evaluation and that he or she receive the necessary and appropriate mental health treatment that is recommended as a result of that evaluation. Provide that the treatment required as a condition of probation may be provided by any state or local agency or, if approved by DOC, by a private physician, psychologist, mental health worker or mental health agency. If a defendant is required to receive treatment, the person treating the defendant would be required, once every 90 days, to file with the court and DOC a written report concerning the defendant's condition and treatment. Provide that a defendant placed on probation after being found guilty but mentally ill could, under certain circumstances, be involuntarily committed for treatment to DHFS.

The treatment of these provisions would first apply to offenses committed on the effective date of the bill.

Conference Committee/Legislature: Delete provision.

35. PROHIBIT CERTAIN SEX OFFENDERS FROM WORKING OR VOLUNTEERING WITH CHILDREN

Assembly: Provide that whoever has been convicted of second-degree sexual assault of a child (having sexual contact or sexual intercourse with a person who has not attained the age of 16, but who is not less than 13 years of age) would be prohibited from engaging in an occupation or participating in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age. Require the court to inform the defendant of the requirements and penalties relating to the prohibition against sex offenders working with children. The requirement would first apply to sentencing proceedings that occur on the effective date of the bill. Specify that a violation of the prohibition against working with

children, for those convicted of second-degree sexual assault of a child, would first apply to violations committed on the effective date of the bill, but would not preclude the counting of a second-degree sexual assault of a child before the effective date of the provision for purposes of determining whether a person is subject to the prohibition.

Provide that a person who has been convicted of second-degree sexual assault of a child would be allowed to petition the court in which he or she was convicted to order that the person be exempt from the prohibition and permitted to engage in an occupation or participate in a volunteer position that requires the person to work or interact primarily and directly with children under 16 years of age. Specify that the court may grant the petition if it finds that all of the following apply: (a) at the time of the commission of the crime the person had not attained the age of 19 years and was not more than four years older or not more than four years younger than the child with whom the person had sexual contact or sexual intercourse; (b) the child with whom the person had sexual contact or sexual intercourse had attained the age of 13 but had not attained the age of 16; and (c) it is not necessary, in the interest of public protection, to require the person to comply with the prohibition.

Under current law, the prohibition on engaging in an occupation or participating in a volunteer position that requires working or interacting primarily and directly with children under 16 years of age applies to anyone convicted of first-degree sexual assault of a child (having sexual contact or sexual intercourse with a person who has not attained the age of 13), repeated acts of sexual assault of a child (three or more violations of first or second degree sexual assault of a child), sexual exploitation of a child, incest with a child and child enticement for sexual purposes. In addition, if the victim is under 18 years of age at the time of the offense, the prohibition under current law applies to any person who: (a) is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client; (b) anyone who has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition; or (c) has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the person's conduct, and the defendant knows of such condition. Under current law, the court may grant a petition of exemption from the prohibition for offenders convicted of repeated acts of sexual assault of a child if it finds that: (a) at the time of the commission of the crime the person had not attained the age of 19 years and was not more than four years older or not more than four years younger than the child with whom the person had sexual contact or sexual intercourse; (b) the child with whom the person had sexual contact or sexual intercourse had attained the age of 13 but had not attained the age of 16; and (c) it is not necessary, in the interest of public protection, to require the person to comply with the prohibition.

Conference Committee/Legislature: Delete provision.

36. LIABILITY FOR PARTICIPATION IN THE ILLEGAL DRUG MARKET

Assembly: Provide that a person who knowingly participates in the illegal drug market within this state is liable for civil damages, except that a law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency or the state, is not liable for participating in the illegal drug market, if the participation is in furtherance of an official investigation. For the purposes of the drug dealer liability law, provide the following definitions:

a. "Illegal drug market," the support system of illegal drug-related operations, from production to retail sales, through which an illegal drug reaches the user.

b. "Level 1 offense," possession of seven grams or more, but less than 113 grams, or distribution of less than 28 grams of a specified illegal drug other than marijuana, or possession of 454 grams or more, but less than 1.8 kilograms, of marijuana, or possession of 25 plants or more, but less than 50 plants, containing tetrahydrocannabinols, or distribution of less than 454 grams of marijuana.

c. "Level 2 offense," possession of 113 grams or more, but less than 227 grams, or distribution of 28 grams or more, but less than 56 grams, of a specified illegal drug other than marijuana, or possession of 1.8 kilograms or more, but less than 3.6 kilograms of marijuana, or possession of 50 plants or more, but less than 75 plants, containing tetrahydrocannabinols, or distribution of more than 454 grams, but less than 2.3 kilograms, of marijuana.

d. "Level 3 offense," possession of 227 grams or more, but less than 454 grams, or distribution of 56 grams or more, but less than 113 grams, of a specified illegal drug other than marijuana, or possession of 3.6 kilograms or more, but less than 7.3 kilograms of marijuana, or possession of 75 plants or more, but less than 100 plants, containing tetrahydrocannabinols, or distribution of more than 2.3 kilograms, but less than 4.5 kilograms, of marijuana.

e. "Level 4 offense," possession of 454 grams or more or distribution of 113 grams or more of a specified illegal drug other than marijuana, or possession of 7.3 kilograms or more of marijuana, or possession of 100 plants or more containing tetrahydrocannabinols, or distribution of 4.5 kilograms or more of marijuana.

f. "Participate in the illegal drug market," distribute, possess with an intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of an illegal drug. The term would not include the purchase or receipt of an illegal drug for personal use only.

g. "Period of illegal drug use," in relation to the individual drug user, the time of the individual's first use of an illegal drug to the accrual of the cause of action (the time the cause of action comes into existence as an enforceable claim or right). The period of illegal drug use

would be presumed to commence two years before the cause of action accrues unless the defendant proves otherwise by clear and convincing evidence.

h. "Place of illegal drug activity," in relation to the individual drug user and unless the defendant proves otherwise by clear and convincing evidence, each assembly district in which a claim is made that the individual possesses or uses an illegal drug or in which the individual resides, attends school, or is employed during the period of the individual's illegal drug use.

i. "Place of participation," in relation to a defendant in an action brought under these provisions, each assembly district in which the person participates in the illegal drug market or in which the person resides, attends school, or is employed during the period of the person's participation in the illegal drug market.

Liability for Participation in the Illegal Drug Market. Provide that a person may recover damages for injury resulting from an individual's use of an illegal drug. Authorize one or more of the following persons to bring an action for damages caused by an individual's use of an illegal drug: (a) a parent, legal guardian, child, spouse, or sibling of the individual drug user; (b) an individual who was exposed to an illegal drug in utero; (c) an employer of the individual drug user; (d) a medical facility, insurer, governmental entity, employer, or other entity that funds a drug treatment program or employee assistance program for the individual drug user or that otherwise expended money on behalf of the individual drug user; and (e) a person injured as a result of the willful, reckless, or negligent actions of an individual drug user.

Provide that a person entitled to bring an action under these provisions may seek damages from one or more of the following: (a) a person who knowingly distributed, or knowingly participated in the chain of distribution of, an illegal drug that was used by the individual drug user; and (b) a person who knowingly participated in the illegal drug market if all of the following apply: (1) the place of illegal drug activity by the individual drug user is within the illegal drug market target community of the person, as defined below; (2) the person's participation in the illegal drug market was connected with the same type of illegal drug used by the individual drug user; and (3) the person participated in the illegal drug market at any time during the individual drug user's period of illegal drug use.

Specify that a person entitled to bring an action could recover all of the following: (a) economic damages, including the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the illegal drug use; (b) non–economic damages, including physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses proximately caused by an individual's use of an illegal drug; (c) punitive damages; (d) reasonable attorney fees; and (e) costs of the suit, including reasonable expenses for expert testimony.

Provide that an individual drug user may bring an action for damages caused by the use of an illegal drug only if all of the following conditions are met: (a) the individual personally

discloses to law enforcement authorities, more than six months before filing the action, all of the information known to the individual regarding all of the individual's sources of illegal drugs; (b) the individual has not used an illegal drug within the six months before filing the action; and (c) the individual continues to remain free of the use of an illegal drug throughout the pendency of the action. An individual drug user would be allowed to seek damages only from a person who distributed, or is in the chain of distribution of, an illegal drug that was actually used by the individual drug user. An individual drug user would be allowed to recover only the following damages: (a) economic damages, including, but not limited to, the cost of treatment, rehabilitation, and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the person's illegal drug use; (b) reasonable attorney fees; and (c) costs of the suit, including reasonable expenses for expert testimony.

Tort Action Limitations. Provide that: (a) an action relating to liability for participation in the illegal drug market must be commenced within two years after the cause of action accrues (comes into existence as an enforceable claim or right) or be barred; (b) a cause of action relating to liability for participation in the illegal drug market would accrue when a person who may recover has reason to know of the harm from illegal drug use that is the basis for the cause of action and has reason to know that the illegal drug use is the cause of the harm; (c) for a plaintiff, the time limit is tolled (interrupted or held in abeyance) while the individual potential plaintiff is incapacitated by the use of an illegal drug to the extent that the individual cannot reasonably be expected to seek recovery; (d) for a defendant, the time limit is tolled until six months after the individual potential defendant is convicted of a criminal drug offense; and (e) the time limit for an action based on participation in the illegal drug market that occurred prior to the effective date of the bill, would not begin to run until the effective date of the bill.

Third-Party Cases and Target Communities. Provide that a third party may not pay damages awarded under these provisions, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification. Provide that a person whose participation in the illegal drug market constitutes the following level of offense would be considered to have the following illegal drug market target community: (a) for a level 1 offense, all assembly districts that comprise the person's place of participation; (b) for a level 2 offense, the target community for a level 1 offense plus all assembly districts with a border contiguous to that target community; (c) for a level 3 offense, the target community for a level 2 offense plus all assembly districts with a border contiguous to that target community; and (d) for a level 4 offense, the state.

Joinder of Parties. Provide that two or more persons may join in one action relating to liability for participation in the illegal drug market as plaintiffs if their respective actions have at least one place of illegal drug activity in common and if any portion of the period of illegal drug use for one plaintiff overlaps with the period of illegal drug use for every other plaintiff. Specify that two or more persons may be joined in one action as defendants if those persons are liable to at least one plaintiff. Provide that a plaintiff need not be interested in obtaining and a defendant need not be interested in defending against all the relief demanded. Provide that

judgment may be given for one or more plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.

Comparative Responsibility. Provide that current law provisions on contributory negligence would apply to an action. Specify that the burden of proving the comparative negligence of the plaintiff would be on the defendant, which would require to be shown by clear and convincing evidence. Provide that comparative negligence could not be attributed to a plaintiff who is not an individual drug user.

Contribution Among and Recovery from Multiple Defendants. Provide that a person subject to liability under these provisions would have a right of action for contribution against another person subject to this liability. Provide that contribution may be enforced either in the original action or by a separate action brought for that purpose. Specify that a plaintiff would be permitted to seek recovery in accordance with these provisions and existing law against a person whom a defendant has asserted a right of contribution.

Standard of Proof and the Effect of Criminal Drug Conviction. Require that proof of participation in the illegal drug market in an action under these provisions must be shown by clear and convincing evidence. Except as otherwise provided in these provisions, specify that other elements of the cause of action would require to be shown by a preponderance of the evidence. Specify that a person against whom recovery is sought who has a criminal drug conviction under either state or federal law would be estopped (barred) from denying participation in the illegal drug market. Specify that such a conviction would also be prima facie evidence of the person's participation in the illegal drug market during the two years preceding the date of an act giving rise to a conviction. Provide that the absence of such a criminal conviction of a person against whom recovery is sought does not bar an action against that person.

Attachment, Execution and Stay. Provide that a plaintiff may request an ex parte (without notice to, or argument by, the defendant) prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. Specify that if attachment is instituted, a defendant would be entitled to an immediate hearing and that the attachment may be lifted if the defendant demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award. Provide that a person against whom a judgment has been rendered under these provisions would not be eligible to exempt any property, of whatever kind, from process to levy or process to execute on the judgment. However, specify that any assets sought to satisfy a judgment in an action that are named in a forfeiture action or that have been seized for forfeiture by any state or federal agency would not be allowed to be used to satisfy a judgment unless and until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

Provide that a district attorney would be authorized to represent the state or a political subdivision of the state in an action brought under these provisions. Provide that, on motion by a governmental agency involved in a drug investigation or prosecution, an action brought

would be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

Conference Committee/Legislature: Delete provision.

37. ELIMINATING RECOVERY FOR PERSONAL INJURY WHILE COMMITTING A FELONY

Assembly: Provide that no person may recover damages for an injury to real or personal property if the injury was incurred while committing, or as a result of committing, an act that constituted a felony and the person was convicted of a felony for that act. Provide that no person may recover damages for death or for personal injury if the injury or death was incurred while committing, or as a result of committing, an act that constituted a felony and the person was convicted of a felony for that act. The provisions would first apply to a death or injury that occurs on the effective date of the bill.

Conference Committee/Legislature: Delete provision.